

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In the Matter of :

Carson River Mercury Site  
(BCB Property)

Respondents:

Sutro Tunnel Company  
L&S Associates  
Peter G. Leonard  
James B. Schryver  
BCB Ventures  
Julius Bunkowski  
John C. Cowee  
Bruce Bunkowski

EPA ORDER NO.  
91-1

Proceeding under Section 106 of the  
Comprehensive Environmental Response,  
Compensation and Liability Act of 1980,  
as amended by the Superfund Amendments  
and Reauthorization Act of 1986  
(42 U.S.C. Section 9606(a))

PREAMBLE

This Administrative Order (Order) is issued on this date to  
Respondents, pursuant to the authority vested in the President of  
the United States by Section 106(a) of the Comprehensive Environ-  
mental Response, Compensation and Liability Act of 1980, 42  
U.S.C. Section 9606(a), as amended by the Superfund Amendments  
and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA),  
delegated to the Administrator of the United States Environmental

1 Protection Agency (U.S. EPA) by Executive Order No. 12580,  
2 January 23, 1987, 52 Federal Register 2923, and further delegated  
3 to the Assistant Administrator for Solid Waste and Emergency  
4 Response and to the EPA Regions by U.S. EPA Delegation Nos. 14-  
5 14-A and 14-14-B.

6 By copy of this Order the State of Nevada has been notified of  
7 the issuance of this Order as required by Section 106(a) of  
8 CERCLA, 42 U.S.C. Section 9606(a).

9 This Order requires the Respondents to undertake and complete  
10 emergency removal activities to abate an imminent and substantial  
11 endangerment to the public health and welfare or the environment  
12 that may be presented by the actual or threatened release of haz-  
13 ardous substances.

## 14 II. Findings of Fact

15 Based on available information, including that contained in the  
16 Administrative Record in this matter, U.S. EPA hereby finds:

### 17 A. Site Description

#### 18 1. Physical Location:

19 The BCB property, hereafter the "Site", is located ap-  
20 proximately 1.4 miles east of Segale Road on the north side of US  
21 Highway 50 in Lyon County, Nevada. The Site occupies at least  
22 6.5 acres of a larger parcel of open range near a newly con-  
23 structed residential area.

#### 24 2. Site Characteristics

25 The Site is unfenced and has located on it several large

1 piles and many smaller piles of mercury-contaminated soils, and a  
2 dried-out abandoned pond. The piles, which are dispersed across  
3 the Site, are estimated to contain approximately 1000 cubic yards  
4 of material. The Site is traversed by numerous off-road vehicle  
5 (ORV) tracks.

6 3. National Priority List Status (NPL) Status:

7 The Carson River Mercury Site, which encompasses the Carson  
8 River watershed is on the National Priorities List. The BCB  
9 property is within said river's watershed and forms a portion of  
10 the NPL site.

11 B. Incident/Release Characteristics:

12 On May 8, 1990, the Nevada Division of Environmental Protec-  
13 tion (NVDEP) conducted a Site visit with representatives of EPA.  
14 NVDEP personnel identified the piles they had previously sampled  
15 and found to contain over 500 ppm mercury. Tire tracks were ob-  
16 served in and on the piles. There was no fence around the Site  
17 and no posted warning signs.

18 EPA's sampling confirmed high levels of mercury throughout  
19 the 6.5 acre Site. Concentrations of up to 1500 ppm mercury were  
20 found in some locations on the Site.

21 The following conditions bearing on the need for initiating  
22 a removal action exist at the Site:

23 1. There is an actual or potential exposure to hazard-  
24 ous substances or pollutants or contaminants by nearby popula-  
25 tions, animals and the food chain. -- Without fencing there is a

1 direct dermal and inhalation contact threat for people in that  
2 the Site is being regularly used by ORV enthusiasts. Without  
3 soil stabilization, given the disturbance of the soil by ORV use,  
4 an offsite threat to people from wind or water-borne contaminant  
5 migration exists. In addition, without soil stabilization, mer-  
6 cury contaminated soils may migrate to the food chain in the Car-  
7 son River.

8           2. There exist high levels of hazardous substances or  
9 pollutants or contaminants in soils largely at or near the sur-  
10 face, that may migrate. -- Mercury concentrations exceeding 1000  
11 ppm in surface sediments greatly exceed all regulatory and  
12 health-related levels of concern, and are subject to movement  
13 through windy and rainy weather.

14           3. Weather conditions that may cause hazardous sub-  
15 stances or pollutant or contaminants to migrate when released are  
16 not unusual in the vicinity of the Site. -- These include fre-  
17 quent high winds and the potential for severe flash floods.  
18 These conditions could easily transport contaminated soils off-  
19 site through water or air-borne mechanisms. Nearby residents are  
20 exposed when wind-borne sediments blow through their residences,  
21 and water-borne run-off may eventually reach the Carson River.

22           4. There are no other available appropriate Federal or  
23 State response mechanisms to respond to the release. -- The State  
24 has informed EPA that it is financially unable to conduct any  
25 further site stabilization or other response for the foreseeable

1 future.

2 C. Quantity and Types of Substances Present

3 1. Chemical Categories Present

4 Elemental mercury (quicksilver) is present on Site in soil  
5 and sediment which appears to be old mill tailings. The source  
6 of this mercury is from its use in amalgamating silver and/or  
7 gold ore. This source is well studied and documented in mining  
8 histories of the region published by the University of Nevada-  
9 Reno, Mackay School of Mines.

10 2. Sampling Methodology

11 All sampling and analysis was conducted in accordance with  
12 EPA standard field operating procedures. Samples were analyzed  
13 onsite using an XRF analyzer, followed by offsite laboratory con-  
14 firmation.

15 D. Threats to Public Health and Welfare

16 Inhalation or ingestion of mercury by persons on or near the  
17 Site poses a serious health risk. Mercury is a strong neurotoxin  
18 and is a well documented cause of brain and nervous disorders  
19 such as dementia. It has been determined to be a hazardous sub-  
20 stance pursuant to Section 102(a) of CERCLA and 40 CFR 302.4.

21 E. Respondents

22 1. Sutro Tunnel Company is a Nevada Corporation. On infor-  
23 mation and belief, it or its corporate predecessor(s) owned the  
24 Site from on or about 1865 until April, 1990. During said  
25 period, soils containing mercury were disposed of on the Site.

1           2. L & S Associates acquired title to the Site on April 17,  
2   1990 and conveyed ownership to B.C.B. Ventures, a partnership, on  
3   July 23, 1990.

4           3. Peter G. Leonard was the managing partner and James B.  
5   Schryver was a partner of L & S Associates at the time it owned  
6   the Site.

7           4. Julius Bunkowski, John C. Cowee, and Bruce Bunkowski are  
8   general partners in B.C.B. Ventures.

9  
10       F. Threats to the Environment

11           The mercury on the Site, particularly when subject to dis-  
12   turbance by ORV use, will spread by wind or rainfall. This may  
13   result in more mercury entering the Carson River drainage which  
14   further exacerbates the problem of uptake of mercury by the  
15   aquatic food chain. Wind-borne spreading of mercury results in  
16   the potential for increased inhalation and ingestion exposure by  
17   wildlife in the area.

18                               III. Conclusions of Law

19       Based of the foregoing Findings, U.S. EPA has concluded that:

20           A. Each respondent is a "person" as defined in Section  
21   101(21) of CERCLA, 42 U.S.C. Section 9601(21).

22           B. The BCB property Site is a "facility" as defined in  
23   Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

24           C. Mercury is a "hazardous substance" as the term is  
25   defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

1           D. The presence of mercury contaminated soils at the Site  
2 and the potential for those soils to migrate due to the effects  
3 of the elements, constitutes a "release" or "threatened release"  
4 of hazardous substances into the environment as defined in Sec-  
5 tion 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

6           E. Respondents are "responsible parties" as defined in  
7 Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20) and are li-  
8 able persons pursuant to Section 107(a) of CERCLA, 42 U.S.C. Sec-  
9 tion 9607(a).

#### 10                           IV. Determinations

11           Based on the Findings of Fact and Conclusions of Law, the  
12 Director, Hazardous Waste Management Division, EPA Region 9, has  
13 made the following determinations:

14           A. The actual or threatened release of hazardous sub-  
15 stances from the Facility may present an imminent and substantial  
16 endangerment to the public health, welfare, or the environment.

17           B. The actions required by this Order, if properly per-  
18 formed, are consistent with the National Contingency Plan (NCP),  
19 40 CFR Part 300, and CERCLA, and are reasonable and necessary to  
20 protect the public health, welfare and the environment.

21           C. The conditions present at the Facility constitute a  
22 threat to public health or the welfare or the environment based  
23 upon consideration of the factors set forth in the NCP at 40 CFR  
24 section 300.415(b).



1 Site in accordance with instructions provided by the OSC so as to  
2 remove them as an attraction to ORV users.

3 b. Fully stabilize the soils and sediments on site so as to  
4 reduce the threat of contaminants migrating due to weather condi-  
5 tions by applying an effective soil sealant. Periodically  
6 reapply soil sealant as determined to be necessary by EPA to  
7 maintain stabilization.

8 c. Characterize the extent and nature of any residual con-  
9 tamination at the Site.

10 4. Respondents shall inform EPA at least forty-eight (48) hours  
11 prior to any on Site work.

12 5. All sampling and analysis shall be performed consistent with  
13 the "Removal Program Quality Assurance/Quality Control Interim  
14 Guidance: Sampling, QA/QC Plan and Data Validation", EPA OSWER  
15 Directive 9360.4-01, dated February 2, 1989.

16 6. EPA has appointed an On-Scene Coordinator (OSC) for the  
17 Site who shall have the authority vested in an On-Scene Coor-  
18 dinator by 40 C.F.R. Part 300, as amended, including the  
19 authority to halt, conduct, or direct any work required by this  
20 Order, or to direct any other response action undertaken by U.S.  
21 EPA or the Respondents at the Site. The On-Scene Coordinator  
22 for the Site for the purposes of this Order is:

23 Robert Mandel  
24 United States Environmental Protection Agency, Region 9  
25 Mail Code H-8-3  
75 Hawthorne Street  
San Francisco, California 94105

1  
2 7. No extensions to the above time frames shall be granted  
3 without sufficient cause. All extensions must be requested, in  
4 writing, and shall not be deemed accepted unless approved, in  
5 writing, by U.S. EPA.

6 8. All instructions by the U.S. EPA On-Scene Coordinator or his  
7 designated alternate shall be binding upon the Respondents as  
8 long as those instructions are not clearly inconsistent with the  
9 National Contingency Plan.

10 9. To the extent that the Site or other areas where work under  
11 this Order is to be performed is owned by, or in possession of,  
12 someone other than the Respondents, Respondents shall obtain all  
13 necessary access agreements. In the event that after using their  
14 best efforts Respondents are unable to obtain such agreements,  
15 Respondents shall immediately notify U.S. EPA.

16 10. Respondents shall provide access to the Site to U.S. EPA  
17 employees, contractors, agents, and consultants at reasonable  
18 times, and shall permit such persons to be present and move  
19 freely in the area in order to conduct inspections, including  
20 taking photographs and videotapes of the Site, to do  
21 cleanup/stabilization work, to take samples to monitor the work  
22 under this Order, and to conduct other activities which the U.S.  
23 EPA determines to be necessary.

24 11. Nothing contained herein shall be construed to prevent U.S.  
25 EPA from seeking legal or equitable relief to enforce the terms

1 of this Order, or from taking other legal or equitable action as  
2 it deems appropriate and necessary, or from requiring the Respon-  
3 dents in the future to perform additional activities pursuant to  
4 CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable  
5 law.

6 12. The provisions of this Order and the directions of the On-  
7 Scene Coordinator shall be binding on the employees, agents, suc-  
8 cessors, and assignees of the Respondents.

9 13. This Order shall be effective seven (7) calendar days fol-  
10 lowing issuance unless a conference is requested as provided  
11 herein. If a conference is requested, this Order shall be effec-  
12 tive on the third (3rd) calendar day following the day of the  
13 conference unless modified in writing by U.S. EPA.

14 14. On or before two (2) calendar days of the effective date of  
15 this Order, Respondents shall provide notice, verbally or in  
16 writing, to U.S. EPA stating their intention to comply with the  
17 terms of this Order. Verbal notification must be followed in  
18 writing within five (5) calendar days. In the event any respon-  
19 dent fails to provide such notice, such Respondent shall be  
20 deemed not to have complied with the terms of this Order.

21 15. Copies of all records and files relating to hazardous sub-  
22 stances found on the Site shall be retained by Respondents for  
23 six years following completion of the activities required by this  
24 Order and shall be made available to the U.S. EPA prior to the  
25 termination of the removal activities under this Order.

1 16. Respondents shall submit a final report summarizing the ac-  
2 tions taken to comply with this Order. The report shall contain,  
3 at a minimum: identification of the Site, a description of the  
4 locations and types of hazardous substances encountered at the  
5 Site upon the initiation of work performed under this Order, a  
6 chronology and description of the actions performed (including  
7 both the organization and implementation of response activities),  
8 a listing of the resources committed to perform the work under  
9 this Order (including financial, personnel, mechanical and tech-  
10 nological resources), identification of all items that affected  
11 the actions performed under the Order and discussion of how all  
12 problems were resolved, a discussion of removal and disposal op-  
13 tions considered for any hazardous substances that may be removed  
14 from the Site, and a presentation of the analytical results of  
15 all sampling and analyses performed and accompanying appendices  
16 containing all relevant paperwork accrued during the action  
17 (e.g., manifests, invoices, bills, contracts, permits). The  
18 final report shall also include an affidavit from a person who  
19 supervised or directed the preparation of that report. The af-  
20 fidavit shall certify under penalty of law that based on personal  
21 knowledge and appropriate inquiries of all other persons involved  
22 in preparation of the report, the information submitted is true,  
23 accurate and complete to the best of the affiant's knowledge and  
24 belief. The report shall be submitted within ten (10) days of  
25 completion of the work required by the U.S. EPA.

1 17. All notices, reports and requests for extensions submitted  
2 under terms of this Order shall be sent by certified mail, return  
3 receipt requested, and addressed to the following:

4                   one copy       Robert Mandel, H-8-3  
5                                   On-Scene Coordinator  
6                                   Environmental Protection Agency  
7                                   75 Hawthorne Street  
8                                   San Francisco, CA 94105  
9                   one copy       Charles McKinley, RC-5  
10                                  Office of Regional Council  
11                                  Environmental Protection Agency  
12                                  75 Hawthorne Street  
13                                  San Francisco, CA 94105

14 18. If any provision of this Order is deemed invalid or unen-  
15 forceable, the balance of this Order shall remain in full force  
16 and effect.

#### 17 VI. ADMINISTRATIVE RECORD

18 The Administrative Record supporting the selection of the  
19 response action for this site will be available for review on  
20 normal business days between the hours of 9:00 a.m. and 5:00 p.m.  
21 in the Superfund Records Center, Environmental Protection Agency,  
22 Region IX, 75 Hawthorne Street, San Francisco, California.

#### 23 VII. OPPORTUNITY TO CONFER

24 With respect to the actions required above, Respondents may  
25 within five (5) calendar days after issuance of this Order, re-  
quest a conference with the EPA. Any such conference shall be

1 held within seven (7) calendar days from the date of request un-  
2 less extended by mutual agreement of the parties. At any con-  
3 ference held pursuant to the request, Respondents may appear in  
4 person, or be represented by an attorney or other representative.  
5 If any Respondent desires such a conference, the Respondent shall  
6 make such a request to one of the persons identified as a Contact  
7 on the list attached hereto.

8 If such a conference is held, Respondents may present any  
9 evidence, arguments or comment regarding this Order, its ap-  
10 plicability, any factual determinations upon which the Order is  
11 based, the appropriateness of any any action which Respondents  
12 are ordered to take, or any other relevant and material issue.  
13 Any such evidence, arguments or comments should be reduced to  
14 writing and submitted to EPA within two (2) calendar days follow-  
15 ing the conference. If no conference is requested, any such  
16 evidence, arguments or comments must be submitted in writing  
17 within five (5) calendar days following the issuance of this Or-  
18 der. Any such writing should be directed to Charles McKinley,  
19 Assistant Regional Counsel.

20 Respondents are hereby placed on notice that U.S. EPA will take  
21 any action which may be necessary in the opinion of U.S. EPA for  
22 the protection of public health and welfare and the environment,  
23 and Respondents may be liable under Section 107(a) of CERCLA, 42  
24 U.S.C. Section 9607(a), for the costs of those government ac-  
25 tions.

VIII. PENALTIES FOR NONCOMPLIANCE

Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject the Respondents to a civil penalty of no more than \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject the Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

IT IS SO ORDERED ON THIS 23<sup>rd</sup> day of October, 1990.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Jeff Zelikson

Jeff Zelikson, Director  
Hazardous Waste Management Division  
United States Environmental Protection Agency  
Region IX

1    Contacts:

2    Robert Mandel, H-8-3  
3    On-Scene Coordinator  
4    Environmental Protection Agency  
5    75 Hawthorne Street  
6    San Francisco, CA 94105  
7    (415) 744-2290

8    Charles McKinley, RC-5  
9    Office of Regional Council  
10    Environmental Protection Agency  
11    75 Hawthorne Street  
12    San Francisco, CA 94105  
13    (415) 744-1317

14    Brent Maier  
15    Case Enforcement Officer  
16    Environmental Protection Agency  
17    75 Hawthorne Street  
18    San Francisco, CA 94105  
19    (415) 744-2299